

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
LUVANDER HOLLAWAY, d/b/a)	
LUVANDER HOLLAWAY INCOME TAX)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, alleges against Defendant, Luvander Hollaway, individually and doing business as Luvander Hollaway Income Tax, as follows:

1. This is a civil action brought by the United States under §§ 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("I.R.C.") to enjoin Defendant, Luvander Hollaway, and anyone in active concert or participation with him, from directly or indirectly:

- (a) acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than himself;
- (b) engaging in any activity subject to penalty under 26 U.S.C. § 6695, including § 6695(g), which penalizes return preparers who claim the Earned Income Tax Credit (EITC) for their customers without first complying with the due diligence requirements imposed by Treasury regulations;
- (c) engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6701, or any other penalty provision in the I.R.C.; and

- (d) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. §§ 7402(a), 7407, and 7408.

3. This Court has jurisdiction under 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1) and (b)(2) because Hollaway resides and conducts his business in this judicial district and because a substantial part of the actions giving rise to this suit took place in this district.

Hollaway's Activities

5. Hollaway is a commercial tax return preparer doing business under the name "Luvander Hollaway Income Tax" (LHIT).

6. Hollaway conducts business from an office located at 410 S. Orange Avenue in Newark, New Jersey.

7. Hollaway is the sole owner of LHIT, which he started in 1994.

8. Hollaway operates LHIT as a sole proprietorship with the principal business purpose of preparing federal and state income tax returns.

9. The returns prepared by Hollaway report the paid preparer as "Luvander Hollaway Income Tax." For returns prepared by LHIT, the box designated for the paid preparer's signature lists either the name Luvander Hollaway or Maronda Pierce.

10. Upon information and belief, Ms. Pierce works for LHIT as a tax return preparer and Hollaway allows Ms. Pierce to electronically file returns under his EFIN (Electronic Filing Identification Number).

11. Hollaway does not have a PTIN (Preparer Tax Identification Number) with the IRS.

12. Hollaway prepares approximately 500 returns each year, with a refund rate ranging between 92 and 98 percent each year. In addition, nearly 70 percent of those returns include claims for the EITC.

13. The table below shows the number of federal income tax returns prepared by Hollaway between 2007 and 2011 and the number of those returns claiming a refund and/or the EITC:

Tax Year	# of Returns Prepared	# of Refund Returns	% of Refund Returns	# of EITC Returns	% of EITC Returns
2006	527	515	98%	347	66%
2007	494	455	92%	327	66%
2008	521	500	96%	351	67%
2009	495	475	96%	336	68%
2010	385	367	95%	269	70%

14. The EITC is a refundable tax credit available to certain low-income level individuals. Because the EITC is a *refundable* credit, claiming the EITC often reduces a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the U.S. Treasury.

15. The amount of the credit is based in large part on the individual's annual income and the number of dependents reliant on the taxpayer for financial support.

16. Due to the method used to calculate the EITC, an individual can claim a larger EITC by claiming more dependents and, for certain income ranges, individuals with higher annual incomes are entitled to a larger credit than those with lower annual incomes.

17. The EITC can be, and often is, exploited by return preparers who are willing to claim on their customers' returns bogus dependents, to mint phony Schedule C businesses, or to otherwise falsify information in order to obtain or maximize the credit for customers.

18. Because of the potential for abuse in claiming the EITC, Congress has authorized the Treasury Secretary to impose "due diligence" requirements on federal income tax return preparers claiming the EITC for their customers. These "due diligence" requirements obligate return preparers to make "*reasonable inquiries*" to ensure the customer is legitimately entitled to the EITC. The return preparer may not "ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete." *See* 26 C.F.R. § 1.6695-2 (2010). Return preparers must also document their compliance with these requirements and keep that documentation for three years. *Id.*

19. The regulations provide that return preparers "must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete." *Id.* The return preparer "must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries." *Id.*

20. In 2006, the IRS reviewed 100 returns prepared by Hollaway claiming the EITC. Hollaway failed to satisfy the due diligence requirements on 84 of those 100 returns.

21. At that time, the IRS assessed \$8,400 in penalties against Hollaway for his 84 separate violations of 26 U.S.C. § 6695(g).

22. Hollaway agreed to the penalty and later paid the amount in full.

23. The IRS examined a sample of 56 returns that Hollaway prepared for the tax years 2006, 2007, 2008, and 2009 on which he claimed the EITC for his customers. Of the 56 examined returns, 43 resulted in the IRS reducing or disallowing the amount claimed, a more than 75% disallowance rate.

24. In 2010, the IRS contacted Hollaway and requested 10 random client files to determine whether he was in compliance with the due diligence requirements with respect to preparing income tax returns claiming the EITC. The review of these customer files revealed that Hollaway was still failing to comply with the due diligence requirements by failing to make reasonable inquiries to determine his customers' eligibility for the EITC when information provided by customers appeared incorrect, inconsistent or incomplete.

25. Of the 10 returns and accompanying customer files that the IRS examined in 2010:

- a. All ten files contained a copy of Form 8867, the Paid Preparer's Earned Income Credit Checklist, but none are supported by any documentation or evidence to support answers to any of the questions. There is no record in the files of how, when, and from whom the information used to prepare the form was obtained;
- b. Six of the ten returns included claims for the EITC that listed qualifying dependents who did not bear a relationship of either son or daughter to the taxpayer (*e.g.*, nephew, niece, brother, sister, etc.). Although these

individuals could potentially qualify as dependents supporting an EITC claim, there is nothing in the file to show that Hollaway made any effort to verify that these alleged dependents were qualifying children for the purposes of the EITC. More importantly, without claiming those dependents, his customers would have received a lower EITC or not have qualified for the EITC at all;

- c. One of the ten files included a claim for an alleged dependent that was 22-years old, yet there was no documentation or evidence in the file to suggest that the alleged dependent was a full-time student or disabled in 2009. There was also no evidence to suggest that Hollaway asked any questions or made any attempt to verify that the alleged dependent was a full-time student or disabled.
- d. Four of the ten returns included suspicious Schedules C, each of which reported gross income, but no expenses. There is no evidence in the files (*i.e.* Form 1099-Miscellaneous) to indicate how the gross income figures were calculated, but in each case, the Schedule C income results in the maximum EITC for Hollaway's customers. The corresponding files contained no documentation to show that Hollaway made any inquiries to substantiate the existence of these Schedule C businesses.

26. In May of 2011, the IRS once again inspected Hollaway's preparation procedures.

This latest investigation revealed that for the 2009 tax year, Hollaway prepared 176 returns

claiming the EITC. The IRS found that Hollaway failed to satisfy the due diligence knowledge requirement in preparing 173 of the those returns.

27. The IRS again penalized Hollaway \$100 for each of the 173 violations, totaling \$17,300 in penalties.

28. Interviews with customers and IRS audits reveal that Hollaway's misconduct goes way beyond failing to adhere to the due diligence requirements.

29. The examination of one customer, Demeresti Barnhill, demonstrates the wilfulness of Hollaway's conduct in defrauding the government with respect to the EITC.

30. Hollaway prepared 2009 and 2010 tax returns for Ms. Barnhill. Ms. Barnhill's 2009 return reported Schedule C business income of \$4,000 from a childcare business. Ms. Barnhill told the IRS investigator that she did not run a childcare business. Ms. Barnhill stated that she occasionally babysat for friends, but she did not charge them a fee. Ms. Barnhill stated that she never told Hollaway that she operated a childcare business, nor did she ever provide him with documents to substantiate the existence of a childcare business. According to Ms. Barnhill, the only income verification she provided to Mr. Hollaway was a Form W-2 from Pathmark Stores, Inc. That income alone would not have been sufficient to allow Ms. Barnhill to claim the EITC.

31. Holloway also falsified dependents on Ms. Barnhill's 2010 return. Ms. Barnhill's 2010 return listed two "grandchildren" as dependents, but in fact, Ms. Barnhill admitted to the IRS investigator that the individuals listed were not her grandchildren. Ms. Barnhill stated that she had purchased these children's social security cards and birth certificates from their mother in order to claim the EITC. Ms. Barnhill stated that Hollaway was aware of this arrangement and that he knew these individuals were not her grandchildren.

32. Ms. Barnhill's 2010 return lists a third dependent, Eugene Moses. The return states that Moses is Ms. Barnhill's brother, when in fact, Moses was her fiancé. Ms. Barnhill stated that Hollaway knew Moses was her fiancé and that she was unaware that Hollaway listed Moses as her "brother" on her tax return.

Harm Caused by Hollaway

33. Hollaway's customers have been harmed because they pay him substantial return preparation fees (between \$135-\$185) and rely on him to prepare proper tax returns. Instead, Hollaway prepares returns that substantially understate their correct tax liabilities. As a result, many customers now face large income tax deficiencies, including sizeable penalties and interest.

34. Hollaway's conduct harms the United States because his customers are under-reporting their correct tax liabilities and in many cases receiving unwarranted refunds, thereby diminishing tax revenues.

35. The IRS disallowed 43 improper EITC claims (of a sample of 56 returns that were examined) on returns that Hollaway prepared for tax years 2006 through 2009, with a total of \$185,181 in lost revenue (an average of over \$3,314 per return). The IRS is still conducting audits on Hollaway's 2009 and 2010 customers to determine the extent of the revenue loss.

36. Hollaway further harms the United States because the IRS must devote limited resources to identifying Hollaway's customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties.

37. Hollaway's activities also undermine public confidence in the administration of the federal tax system and encourage noncompliance with tax laws.

Count I
Injunction Under § 7407 for Conduct
Subject to Penalty Under §§ 6694 and 6695

38. Plaintiff incorporates by reference the allegations in paragraphs 1 through 37.

39. Under 26 U.S.C. § 7407, Congress has authorized the United States to seek an injunction against any tax preparer who, among other things, has engaged in any conduct subject to penalty under §§ 6694 or 6695.

40. If a return preparer's conduct is continual and/or repeated and the court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of federal tax laws, the court may enjoin the person from acting as a return preparer.

41. Section 6694(b) of the Code penalizes a tax return preparer who prepares a return or claim for refund with respect to which any part of an understatement of liability is due to

- a. a willful attempt to understate the liability for tax on the return or claim or
- b. a reckless or intentional disregard of rules or regulations.

42. The example in paragraphs 29 through 31 above demonstrates the willful efforts by Hollaway to understate his customers' proper tax liabilities. It also shows an intentional disregard of Treasury rules and regulations.

43. In addition, section 6695(g) and the Treasury regulations promulgated thereunder, prohibit a return preparer from claiming the EITC without first conducting the proper due diligence and documenting his compliance with the due diligence requirements. *See* 26 C.F.R. § 1.6995-2 (2010).

44. Hollaway has continually and repeatedly prepared federal income tax returns that claim the EITC for which he has not conducted nor documented the required due diligence procedures. Hollaway knew or should have known that many of his customers were not legitimately entitled to the EITC based on the income and dependency requirements.

45. Even after the IRS assessed \$8,400 penalties against Hollaway for conduct subject to penalty under § 6695(g) in 2006, Hollaway continued to use his business to claim the EITC for customers on 2007, 2008, 2009 and 2010 returns (that Hollaway prepared during 2008, 2009, 2010 and 2011 respectively) for which he failed to conduct and/or document the required due diligence procedures.

46. Injunctive relief is necessary to prevent this continued misconduct because, absent an injunction, Hollaway is likely to continue preparing federal income tax returns for customers that enable them to receive greater refunds than what they are legitimately entitled. Penalties and other administrative measures are insufficient to deter his conduct.

47. Hollaway should be permanently enjoined under 26 U.S.C. § 7407 from acting as an income tax preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws.

Count II
Injunction under I.R.C. § 7408 for Conduct
Subject to Penalty Under § 6701

48. Plaintiff incorporates by reference the allegations in paragraphs 1 through 47.

49. Section 7408 of the Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

50. Section 6701(a) of the Code penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

51. Hollaway prepares tax returns on which he claims customers have earned wages in excess of those reported on Forms W-2 or any other records in order to inflate the EITC his customers may claim on their returns beyond any credit to which they are legitimately entitled.

52. As shown above with Ms. Barnhill, Hollaway willingly aids and assists customers in falsifying dependents in order to obtain the EITC, knowing this will result in customers understating their tax liability and receiving unwarranted refunds.

53. Hollaway has not altered his behavior despite being previously assessed penalties for similar egregious conduct. If the Court does not enjoin Hollaway, he is likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction under I.R.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws

54. Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 53.

55. Section 7402 of the Code authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

56. Hollaway, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

57. Unless enjoined, Hollaway is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Hollaway is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully issuing federal income tax refunds to individuals not entitled to receive them.

58. Enjoining Hollaway is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop Hollaway's illegal conduct and the harm it causes the United States and its citizens.

59. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States of America prays for the following:

A. That the Court find that Luvander Hollaway has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Luvander Hollaway from acting as a federal tax return preparer;

C. That the Court find that Luvander Hollaway has engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that Luvander Hollaway has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Luvander Hollaway, and all those in active concert or participation with him, from:

- a. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than himself;
- b. Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other section of the Internal Revenue Code;
- c. Engaging in any activity subject to penalty under 26 U.S.C. § 6695, including § 6695(g), which penalizes tax preparers for claiming an Earned Income Tax Credit (EITC) for customers without complying with the due diligence requirements imposed by Treasury regulations;
- d. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Luvander Hollaway to contact, within fifteen days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared federal tax returns or claims for a refund for tax years 2006 through 2010 to inform them of the permanent injunction entered against him;

G. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Luvander Hollaway to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund for tax years 2006 through 2010;

H. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Luvander Hollaway to provide a copy of the Court's order to all of LHIT's employees and independent contractors within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of the Court's order for each person whom Hollaway provided a copy of the Court's order;

I. That the Court retain jurisdiction over Luvander Hollaway and over this action to enforce any permanent injunction entered against him;

J. That the United States be entitled to conduct discovery to monitor Hollaway's compliance with the terms of any permanent injunction entered against him; and

K. That the Court grant the United States such other and further relief, including costs,
as is just and reasonable.

DATED: September 29, 2011

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ Mark C. Milton
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